



The U.S. Export Control Program from a a DOD Perspective

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It's a Global Economy

**Technical
Meetings**

**International
Agreements**

**Technical
Information
Requests**

CRADAs

**Foreign
Military
Sales**



**Foreign
Visitors
Programs**

Overview

- Purpose
- Introduction to the export control laws and regulations
- U.S. Munitions List and the Commerce Control List
- Export Control Warning Notice
- Definitions of a foreign national
- “Deemed export rule” and intangible exports

Purpose

Protect certain US technology with military or space application (“critical technology”) from inadvertent foreign disclosure inside and outside the U.S.

Critical Technology Definition

- Technologies that consist of :
 - (a) arrays of design and manufacturing know-how (including technical data);
 - (b) keystone manufacturing, inspection, and test equipment;
 - (c) goods accompanied by sophisticated operation, application, or maintenance know-how
- that would make a significant contribution to the military potential of any country or combination of countries
- that may prove detrimental to the security of the U.S.
- also known as militarily critical technology
 - DoDD 5230.25, *Withholding of Unclassified Technical Data from Public Disclosure*

What is an Export? - Simple Definition

The transfer of anything to a “FOREIGN PERSON” by any means, anywhere, anytime, or the knowledge that what you are transferring to a “U.S. PERSON” will be further transferred to a “FOREIGN PERSON”

Key Points

- Governed by laws and implementing regulations
- Control lists of goods and technologies
- Includes associated technical information
- Requires licensing or approval before export
- Penalties for violation - jail time and fines

US Export Laws

WEAPONS AND WEAPON TECHNOLOGY

Basic Statute: International Security Assistance and Arms Export Control Act of 1976

Implementing Regulation: International Traffic in Arms Regulations (ITAR)

CFR: 22 CFR 120-130 (Foreign Relations)

Product List: U.S. Munitions List (USML) (Part 121)

Implementing Office: State Department, Office of Defense Trade Controls

STRATEGIC TECHNOLOGY

Basic Statute: Export Administration Act of 1979 (P.L. 106-508 reauthorizes the Act through August 20, 2001)

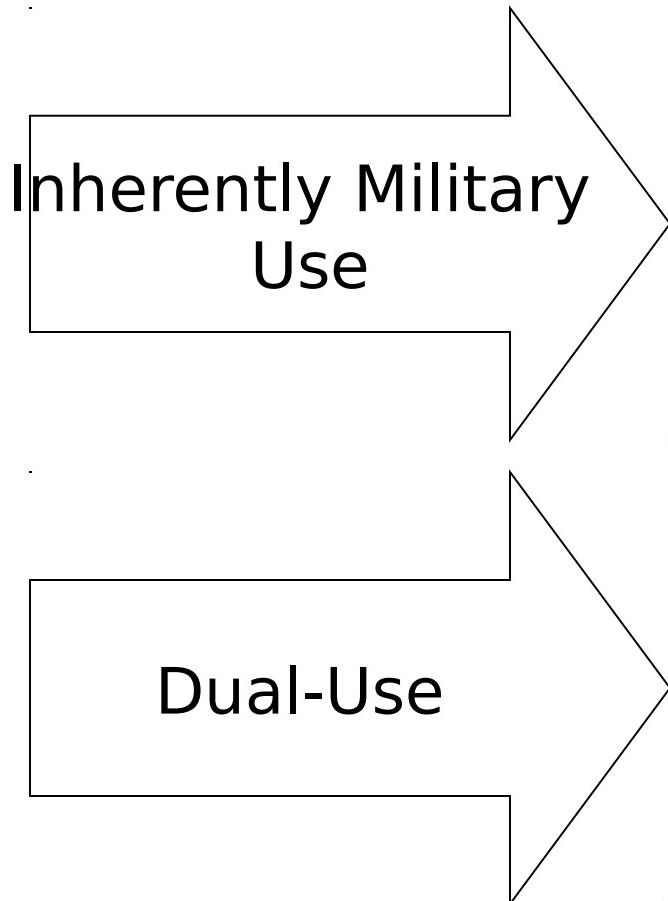
Implementing Regulation: Export Administration Regulations (EAR)

CFR: 15 CFR 730-774 (Commerce and Foreign Trade)

Product List: Commerce Control List (CCL) (Part 774)

Implementing Office: Commerce Department, Bureau of Export Administration

Military-Focused vs. Dual-Use



Defense Articles and Services; weapons and military related use or design

Commodities, Software and Technology that can be used both in military and other strategic uses and commercial applications

The Lists

Commerce Control List (10) US Munitions List (21)

Cat O: Nuclear Materials....

- 1. Materials, Chemicals...
- 2. Materials Processing
- 3. Electronics Design...
- 4. Computers
- 5. Telecommunications...
- 6. Sensors
- 7. Guidance, navigation...
- 8. Marine
- 9. Propulsion Systems...

Cat I. Firearms

III. Ammunitions

IV. Launch Vehicles...

VI. Vessels of War...

VII. Tanks...

VIII. Aircraft...

XIV. Toxicological Agents...

XV. Spacecraft Systems...

XVI. Nuclear Weapons...

XX. Submersible Vessels...

The Goal

Finding the right balance between
national security concerns and trade

Export Control Warning Notice

WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec. 2751 et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C. App 2401 et seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DOD Directive 5230.25.

An International Regime

COCOM → Wassenaar Arrangement
on Export Controls for
Conventional Arms and
Dual-Use Goods and
Technologies

Defining a Foreign National

It
depends!!!!

Permanent Resident Alien

- U.S. permanent resident status
- PRA (Permanent Resident Alien)
- Possesses an Immigration and Naturalization Service Alien Card (INS Form 1-151/551)
- Known as a Green Card holder but the card is now pink or blue
- Legally residing in the U.S.

Permanent Resident Alien - Part II

- Considered a U.S. person according to U.S. export laws
- Considered a U.S. contractor in the receipt of DOD export-controlled technical information
- Considered a U.S. person in visits, assignments, and exchanges to DOD facilities

Definition of an U.S. Contractor

“The individual who will act as recipient of the export-controlled technical data on behalf of the U.S. contractor is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.”

-DoDD 5230.25, Withholding of Unclassified Technical Data from Public Disclosure

Statutory Definition of a Foreign National

- A person in the U.S. on a nonimmigrant visa
 - Such as an L-1 or H-1 visa
 - Permitted to work in the U.S. for an indefinite period of time
- Foreign national means any person who is not a citizen or permanent resident alien of the United States.

Statutory Definition of a Foreign National - Part II

- Considered a foreign national in accordance with U.S. export control laws
- Considered a foreign national in visits, assignments, and exchanges to DOD facilities
- Considered a foreign national in the receipt of DOD export-controlled technical information

Must consider an export license for access.

“Deemed Export” Rule

- A deemed export license is required for any restricted technology that a foreign national sees, hears, or discusses within the U.S.
- Terminology is found in the EAR but also applies under the ITAR
- Such release is ‘deemed’ to be an export to the home country or countries of the foreign national
- Applies to both the commercial world and USG laboratories and other facilities

“Deemed Export” Rule - Part II

- U.S. entities must apply for an export license
 - if:
 - they intend to transfer controlled technologies to foreign nationals in the U.S.
 - Transfer of the same technology to the foreign national's home country would require an export license



Intangible Exports



Technical information transmitted through electronic media, such as telephone, facsimiles and electronic mail

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